IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. 1469

HOMART DEVELOPMENT CO.,

Petitioner,

vs.

ROGER JON DIAMOND,
PEOPLE'S LOBBY, INC.,
and WILLIAM DUXLER,

Respondents.

RESPONDENTS' BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Respondents agree with Petitioner that a writ of certiorari should issue to review the opinion of the Supreme Court of California filed on December 16, 1970. Respondents contend that the decision, with one exception, is correct, and that, in any event, the decision should be of national effect. The one exception is the California Supreme Court's implication that

Homart may impose prior restraints on the exercise of First Amendment rights by the unilateral adoption of regulations.

COUNTER STATEMENT OF QUESTIONS PRESENTED

1. May the owners of a privately owned shopping center which functions as a central business district deny all use of the premises to persons who desire, on those premises, to engage in peaceful and orderly First Amendment activities unrelated to the business of the center?

2. If persons may exercise First Amendment rights on such premises, may the owners nevertheless restrict, limit, and impede the exercise of such rights by the imposition of their previously and unilaterally promulgated regulations?

REASONS FOR GRANTING THE WRIT

A. THE DECISION BELOW SHOULD BE THE LAW OF THE LAND.

Free speech is one of the "preferred rights" in our Constitution. It is a hollow right if there is no way of exercising it. Traditionally, free speech has been exercised in the town square and central business district, where persons congregated in large numbers. Today, the modern shopping center has replaced, to a large extent, the typical town square and central business district, and has become their functional equivalent. The shopping center attracts thousands of persons a day from surrounding residential areas. These persons, whose historical counterparts used to travel to central downtown business districts to partake in commercial and cultural activities, thereby subjecting themselves to communication from others exercising First Amendment rights, now can only be reached at the shopping center. It has therefore become necessary for persons desiring to communicate their message to the public to have access to the shopping center. This is especially the case with respect to certain kinds of First Amendment activities, such as the solicitation of signatures of registered voters on initiative petitions, which can only be effectuated through face to face conduct.

Respondents sought access to Petitioner's shopping center for the purpose of collecting signatures on their anti-pollution initiative petitions, in order to qualify the petitions for the state election. Although Respondents were denied access by Petitioner and by the lower California courts, the California Supreme Court held that Respondents have a right to collect signatures on their anti-pollution initiative petitions and disseminate information in connection therewith, on the premises of the shopping center.

Respondents are now interested in carrying on their anti-pollution campaign in other states, as well as encouraging other citizens to do likewise. Rather than litigating the same issue in numerous other jurisdictions, it would be sounder policy for the citizens of all states to have a similar First Amendment right now confirmed by this Court. The need for immediate confirmation is evident in Illinois and Rhode Island, where trial courts have denied citizens of those states their First Amendment rights. See Homart Development Co. v. Fein, et al., R.I. Sup. Ct. No. 75-275 (August 6, 1970), appeal pending, No. 1174-A, R.I. Sup. Ct., reprinted at Appendix F to the Petition for Writ of Certiorari; People of the State of Illinois v. Sterling, Ill. Cir. Ct., (March 19, 1970), appeal pending, No. 43499, Ill. Sup. Ct.

In conclusion, as the American Civil Liberties Union of Southern California advised the court below, ". . . The issue is one of

general interest and importance to all the public . . . ," and therefore, ought to be resolved by this Court.

B. THE DECISION BELOW, IN SO FAR AS IT AUTHORIZES SHOPPING CENTERS TO PROMULGATE THEIR OWN REGULATIONS TO RESTRAIN RESPONDENTS' FIRST AMENDMENT RIGHTS, VIOLATES THOSE RIGHTS.

The California Supreme Court stated,

> "We impose no unrealistic burden on the operators of shopping centers in insisting that their control over First Amendment rights be exercised, if at all, through reasonable regulations calculated to protect their business interests rather than through absolute bans on all non-business related activities. Shopping centers, like railway stations, are not incapable of regulating permissible activities." Appendix B, p. 19.

Respondents concede that their First Amendment activities on the premises of shopping centers are subject to reasonable regulation. For example, they must be peaceful, orderly,

and not obstruct or interfere with the business of the center. However, Respondents contend that the state or municipality involved rather than a private, self-interested property owner, should adopt the rules and regulations in order to permit citizen participation in the promulgation of such rules and regulations. Indeed, various laws and ordinances dealing with disturbing the peace, loitering, lewd conduct, and loud noises, and others of a similar nature, which exist in most communities in the nation, already constitute a major portion of the rules and regulations governing the conduct of persons on and off shopping center premises. If additional laws are needed, they can be adopted by the appropriate public bodies.

If a shopping center owner believes that certain conduct is obstructive or unduly interferes with the business of the center, he is free to sue for injunctive relief and seek to include in the decree any regulations which he has adopted. In this way, the burden of litigation would be on the shopping center. Otherwise, the citizens will have to initiate litigation to determine the reasonableness of regulations for every shopping center to which they seek access. This burden would have a "chilling effect" on the citizens' First Amendment rights. Furthermore, this burden would be especially great on those persons, such as Respondents, who seek to disseminate their message throughout a state, or the country.

This Court should grant certiorari to consider the issue of "reasonable regulations" set forth in the QUESTIONS PRESENTED. This issue was not definitely resolved by this Court in Amalgamated Food Employees v. Logan Valley Plaza, 391 U.S. 308 (1968):

> "And it may well be that Respondents' ownership of the property here in question gives them various rights, under the laws of Pennsylvania, to limit the use of that property by members of the public in a manner that would not be permissible were the property owned by a municipality." 391 U.S. at 319 (emphasis added).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Ceriorari should be granted.

Respectfully submitted,

ROGER JON DIAMOND

Attorney for Respondents